

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

JAMES H. HAYES,

Case No. 2:20-cv-02122-RFB-BNW

Plaintiff,

ORDER

V.

CITY OF LAS VEGAS, *et al.*,

Defendants.

11 This case has a long procedural history. As relevant to this Order, Plaintiff filed an
12 amended complaint alleging several causes of actions against several defendants. ECF 15-1. This
13 Court recommended dismissal as *Heck*-barred. ECF No. 21. The district court affirmed. ECF
14 No. 26. On appeal, the Ninth Circuit remanded the case back explaining that the record did not
15 reveal whether Plaintiff's §1983 claims would necessarily imply the invalidity of his conviction.
16 ECF No. 46.

17 Further complications ensued given that summonses for certain defendants had not been
18 issued based on the way that Plaintiff drafted the amended complaint. ECF No. 95. On March 19,
19 2024, this Court issued summonses for, among others, Defendants Jex, McElroy, Fox, and
20 Varsin. These summonses were returned unexecuted because Las Vegas Metropolitan Police
21 Department (“METRO”) would not accept service as the summonses did not contain
22 Defendants’ first and last name or “P Number.” ECF No. 101.

23 This Court has an obligation to construe, administer, and employ the Federal Rules of
24 Civil Procedure in a manner “to secure the just, speedy, and inexpensive determination of every
25 action.” FED. R. CIV. P. 1 (“Rule 1”). Although an incarcerated pro se plaintiff is entitled to rely
26 on the USMS to effect service of process, it is ultimately a plaintiff’s responsibility to provide the
27 USMS “sufficient identifying information, including a full name and a current address for the
28 unserved defendants, so they can be served.” *Thomas v. Ellis*, 2014 WL 116286, at *6 (N.D. Cal.
Jan. 13, 2014). At the same time, this Court has an “obligation to assist a pro se incarcerated

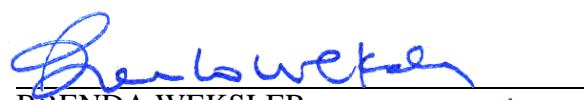
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2 litigant to obtain discovery . . . so that service can be effected.” *Carpio v. Luther*, 2009 WL
3 605300, at *1 (W.D. N.Y. Mar. 9, 2009) (citing *Valentin v. Dinkins*, 121 F.3d 72, 75 (2d Cir.
4 1997)); *see also Billman v. Indiana Dep’t of Corrections*, 56 F.3d 785, 790 (7th Cir. 1995)
5 (“[B]ecause plaintiff] is a prisoner he may not be in a position to identify the proper defendants,
6 or all of them in his complaint.... We think it is the duty of the district court to assist [the
7 incarcerated pro se litigant], within reason, to make the necessary investigation.”).

8 As explained above, METRO has advised that additional information is required in order
9 to effectuate service. Plaintiff has a right to discovery regarding the full names and “P Numbers”
10 of Defendants. Immediate limited discovery directed to Defendants regarding the full name and
11 “P Numbers” appears to be warranted.

12 Therefore, METRO shall determine whether there are any METRO officers that may bear
13 the following last name and first initial (L. Jex, D. McElroy, A. Fox, and E. Varsin) who were
14 present at the Mirage Hotel and Casino on January 26, 2024, responding to a situation roughly
15 corresponding to that described in Plaintiff’s amended complaint. To the extent METRO wishes
16 to object to this Order, it must do so by April 23, 2024. To the extent METRO does not object to
17 this order, METRO shall file a status report by May 7, 2024, advising the Court (a) what
18 METRO was able to determine; (b) to the extent METRO was able to determine which officers
19 are the named defendants, the names of Defendants for whom it accepts service and the names of
20 Defendants for whom it does not accept service; and (c) for Defendants for whom it does not
21 accept service, whether it is willing to file their last-known address under seal with the Court so
22 that the United States Marshal Service can attempt service on those Defendants.

23 **IT IS THEREFORE ORDERED** that the USMS serve this Order on METRO Assistant
24 General Counsel Ruth Miller.

25
26 DATED this 9th day of April 2024.

27
28 
BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE